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## LOK SABHA

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The following Report of the Select Committee on the Bill further to amend the Indian Railways Act, 1890, was presented to Lok Sabha on the 7th August, 1961:—

### Composition of the Select Committee

Dr. Sushila Nayar—*Chairman.*

#### MEMBERS

2. Shri S. A. Agadi
3. Shri Frank Anthony
4. Shri M. Ayyakkannu
5. Shri Pulln Behari Banerji
6. Shri Naushir Bharucha
7. Shri Laxmanrao Shrawanji Bhatkar
8. Shri Ranbir Singh Chaudhuri
9. Shri N. R. Ghosh
10. Shri Yadav Narayan Jadhav
11. Shri Banarsi Prasad Jhunjunwala
12. Shri Liladhar Kotoki
13. Shri Sarjoo Pandey
14. Shri Nanubhai Nichhabhai Patel
15. Shri Balasaheb Patil

- 
16. Shri Ram Garib
  17. Shri Vutukuru Rami Reddy
  - \* 18. Shri Radha Charan Sharma
  19. Shri Shobha Ram
  20. Shri Sinhasan Singh
  21. Shri Jagjivan Ram.

DRAFTSMEN

Shri S. P. Sen Verma, *Joint Secretary and Draftsman, Ministry of Law.*

Shri K. G. Viswanathan, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

### Report of the Select Committee

1, the Chairman of the Select Committee to which the \*Bill to further amend the Indian Railways Act, 1890 was referred, having been authorised to submit the report on their behalf, present their report, with the Bill as amended by the Committee annexed thereto.

2 The Bill was introduced in the Lok Sabha on the 2nd May, 1961. The motion for reference of the Bill to a Select Committee was moved by Shri Shah Nawaz Khan, Deputy Minister of Railways, on the 5th May, 1961 and was adopted on the same day.

3. The Committee held 6 sittings in all.

4. The first sitting of the Committee was held on the 10th May, 1961 to draw up a programme of work. The Committee at this sitting decided to hear evidence of associations/individuals desirous of presenting their suggestions or views before the Committee. The Chairman was authorised to decide after examining the memoranda submitted by them, as to which of the associations should be called to tender oral evidence before the Committee.

5. Nine memoranda or representations on the Bill were received by the Committee from different associations and individuals.

6. At the second sitting of the Committee, held on the 10th July, 1961, the Committee heard evidence tendered by the Indian Produce Association, Calcutta. The Committee have decided to lay *in extenso* the evidence tendered before them on the Table of the House.

7. The Committee considered the Bill clause by clause at their sittings held on the 11th, 12th and 13th July, 1961.

8. The Committee considered and adopted the Report on the 26th July, 1961.

9. The observations of the Committee with regard to the changes proposed in Bill are detailed in the succeeding paragraphs.

10. *Clause 11.*—The Committee have omitted the words “If Hindi is not in common use therein” occurring in that clause, as being redundant.

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\*Published in Part II—Section 2 of the Gazette of India, Extraordinary, dated the 2nd May, 1961.

11. *Clause 13.*—

(i) The amendment made by the Committee in the proposed new section 73(e) is clarificatory in nature.

(ii) The Committee feel that in order to avoid hardship to the claimants asking for refund of overcharge, compensation for losses etc., it should be provided in the proposed new section 78B that any communication in writing, in respect of their claims, sent to the railway administration by the claimants within the prescribed period of six months, should be treated as claim for compensation.

The clause has been amended accordingly.

12. The Select Committee recommend that the Bill as amended be passed.

NEW DELHI;  
*The 26th July, 1961.*

SUSHILA NAYAR,  
*Chairman,*  
*Select Committee.*

### Minutes of Dissent

#### I

In the Statement of Objects and Reasons, it has been stated that:—

“The Railway Freight Structure Enquiry Committee (1956-57) had recommended that the responsibility of the Railways in India as carriers of animals and goods, which is at present that of a bailee, should be changed to that of a common carrier. There is also a public demand for such a change.”

While the object of this Bill is laudable, the provisions cannot but defeat them.

The commons carriers' liability, as defined by the Indian Carriers' Act (III of 1865) is the liability to compensate for the loss, damage, or non-delivery of goods except when the carrier is in a position to show that there is no negligence on his or his servants' part. The common carriers' liability, as known to the English Law is the liability of an insurer.

Clause No. 13 of the Bill is the most crucial clause. There are in the proposed section 73 of the Bill nine different circumstances or exceptions under which, of course, the Railways are allowed to disown this liability with only one easy obligation imposed upon them to show that they had exercised what is described as “reasonable foresight and care.”

It appears plainly that the Amendment Bill proposes in effect to legalise a number of legal obstacles which hitherto came in the way of the Railways' attempt to bring consignees into difficulties throwing them in losses.

The noble intention of increasing the liability of the Indian Railways has been defeated by the one-sided provisions of the Bill.

I find that the Report as it emerges from the Select Committee has not made any specific attempt to see that the Bill satisfies the demand of the public for “such a change” to common carriers.

NEW DELHI;

YADAV NARAYAN JADHAV

*The 26th July, 1961.*

## II

यद्यपि प्रयत्न कर के प्रवर समिति ने रेलवे संशोधन विधेयक को काफी सुधारा है परन्तु फिर भी विधेयक में कुछ ऐसी त्रुटियाँ मौजूद हैं जिनका सुधारा जाना अत्यन्त आवश्यक है। परन्तु दुःख है कि प्रवर समिति ने उक्त दृष्टिकोण नहीं अपनाया जिसके कारण यह विमति-पत्र उपस्थित करना पड़ रहा है।

उक्त विधेयक को प्रस्तुत करते समय यह कहा गया था और उसके उद्देश्यों में भी वर्णन मौजूद है कि उक्त विधेयक का प्रयोजन है सामानों को ठीक अवस्था में पहुँचाना तथा उनके आवागमन की अधिक जिम्मेदारी विभाग पर डालना परन्तु सम्पूर्ण विधेयक को आद्योपान्त देखने से ऐसा जान पड़ता है कि विभाग इस विधेयक के उक्त उद्देश्य को सफलतापूर्वक पूरा करने में असमर्थ है।

इस विधेयक की मुख्य धारा १३ है जिसमें विभाग की जिम्मेदारियों का वर्णन है धारा १३ के द्वारा ही पुराने विधेयक को संशोधित किया गया है। उपधारा ७४ में विभाग की जिम्मेदारी उस सामानों के बरबाद या खराब होने की नहीं रखी गई है जब उक्त सामान के बुरा करने की जिम्मेदारी मालिक पर हो। मेरी समझ में रेलवे विभाग को ही बुरा करने की जिम्मेदारी लेनी चाहिये क्योंकि ऐसा न होने से विभाग को सामानों की बरबादी जो उनके द्वारा भी होगी निकलने का अवसर मिलेगा। इसी तरह धारा ७८-सी. में विभाग की जिम्मेदारी उस दशा में भी नहीं रहेगी जब उक्त सामान को डिब्बों में ठीक से नहीं रखा गया होगा अथवा ठीक से नहीं बाँधा गया होगा। इस धारा का भी काफी दुर्प्रयोग होगा। क्योंकि मेरी राय में ठीक से सामान भरने की जिम्मेदारी भी विभाग पर ही होनी चाहिये। इस धारा के रहते अधिकारी आसानी से यह कह सकेंगे कि पैकिंग ठीक नहीं थी। इसी तरह इसी धारा के दूसरे भाग में कहा गया है, बलबे, तालाबन्दी और हड़ताल की अवस्था में भी विभाग की जिम्मेदारी नहीं होगी। इस धारा का मनमाना अर्थ अदालतें लगा सकेंगी। यह साबित करना कठिन होगा कि हड़ताल आंशिक थी या पूर्ण थी। हड़ताल थी भी या नहीं। यदि उक्त धारा में ज्यों की त्यों कायम रहें तो उक्त विधेयक अधिक लाभकारी नहीं होगा।

नई दिल्ली;  
२७ जुलाई, १९६१

सरजू पाण्डे

### III

While I am in general agreement with the Report of the Select Committee, I feel constrained to invite the attention of the House to clause 6 inserting a new Section 56A dealing with disposal of perishable goods in certain circumstances. Section 56A reads as follows:—

- 56A(1) Where by reason of any flood, land-slip, breach of any line of rails, collision between trains, derailment of or other accident to a train or any other cause, traffic on any route is interrupted and there is no likelihood of early resumption of such traffic, nor is there any other reasonable route whereby traffic of perishable goods may be diverted to prevent loss or deterioration of, or damage to, such goods, the railway administration may, after obtaining wherever practicable instructions from the person appearing to the railway administration to be entitled to the goods, sell them by public auction.
- (2) Out of the proceeds of the sale, the railway administration may retain a sum equal to the charge due in respect of the goods and the expenses of and incidental to the sale rendering the surplus, if any, of the proceeds to the person entitled thereto
- (3) The provisions of this section shall be without prejudice to claim or right which the person entitled to the goods may have against the railway administration under any other enactment for the time being in force."

It will be apparent from sub-section (1) of Section 56A that the Railways are exempted from liability in respect of traffic of perishable goods when the same cannot be diverted by any other reasonable route, in cases not merely of floods or land-slip, but also of 'breach of any line of rails, collision between trains, derailment of or other accident to a train or any other cause' While one can appreciate Railways being exempted from liability on account of floods, land-slip or circumstances over which Railways have no control, it is obvious that where collision between trains occur, it would be more due to negligence of the Railways and it will be unfair to penalize a consignee of perishable goods when the same has to be sold by public auction because such goods cannot reach their destinations on account of negligence of the Railways. Besides the words "any other cause" are wide enough to include causes in which the Railway Administration may be distinctly or grossly negligent.

I am, therefore, of the view that it would be very unjust to penalize consignee of perishable articles for obvious default of Railways. The immunity from liability should only be permitted to Railways where occurrences like floods or land-slips occur or for causes beyond the control of the Railway Administration.

I would, therefore, suggest that the opening words of Section 56(1) should be re-drafted to read as follows:—

“Where by reason of any flood, land-slip, or any other cause beyond the control of the Railway Administration, traffic on any route is interrupted etc. etc.,”

My attention was invited to sub-section (3) which lays down a proviso that the provision of this section shall be without prejudice to the claim or right which the person entitled to the goods may have against the Railway Administration under any other enactment for the time being in force. It was argued that this proviso would take care of the cases, I have mentioned before. I am afraid, however, a proviso has to be interpreted in the context of the foregoing clauses to which it is a proviso. It cannot enlarge the rights of a party already very clearly and specifically restricted under the preceding clauses. To my mind sub-section (3) will not give relief to consignees of perishable goods where as a result of negligence of Railways collision between trains has occurred and the traffic on any route has been interrupted and there is no likelihood of an early resumption of such traffic and in consequence goods consigned have to be sold by public auction.

On the other hand it is extremely unfair that Railway should be permitted to take advantage of their own negligence or wrong and the consignee should be penalised.

This inequity is all the more glaring in view of sub-section (2) which permits the Railways to deduct their freight charges and expenses incidental to the sale out of the meagre sale proceeds realised from a forced public auction of perishable goods. In other words not only the consignee loses his consignment for default of Railways but in addition he has to pay the Railway freight also.

I therefore submit that the House might consider the desirability of amending clause 6 in the light of what I have stated above.

NEW DELHI;

NAUSHIR, BHARUCHA

*The 27th July, 1961.*

Bill No. 32A of 1961

THE INDIAN RAILWAYS (AMENDMENT) BILL, 1961

(AS REPORTED BY THE SELECT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

further to amend the Indian Railways Act, 1890.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Railways (Amendment) Act, 1961. Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

9 of 1890. 2. In section 3 of the Indian Railways Act, 1890 (hereinafter referred to as the principal Act), clauses (14) and (17) shall be omitted. Amendment of section 3.

10 3. In section 27 of the principal Act,—

(a) in sub-section (3), for the words “one mile”, the words “one kilometre” shall be substituted;

(b) in the proviso to sub-section (4),—

15 (i) in clause (a), for the words “per maund”, the words, brackets and figures “per quintal (100 kilograms)” shall be substituted;

(ii) in clause (h), the word “mileage” occurring in two places shall be omitted.

Amendment of section 27.

Amendment  
of section  
47.

4. In section 47 of the principal Act,—

(a) in sub-section (1), for the words "Every railway company and in the case of a railway administered by the Government, an officer to be appointed by the Central Government in this behalf", the following shall be substituted, namely:— 5

"The Central Government or in the case of a railway administered by a railway company, the railway company";

(b) in clause (f) of the same sub-section, for the words "warehouse or retain goods", the words "warehouse goods or retain goods or animals" shall be substituted; 10

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) A rule made under this section, whether by the Central Government or a railway company, shall not take effect until it is published in the Official Gazette, and in the case of a rule made by a railway company, unless before such publication it has also received the sanction of the Central Government." 15

Amendment  
of section 55.

5. In section 55 of the principal Act, the word "terminal", wherever it occurs, shall be omitted. 20

Insertion of  
new section  
56A.

Disposal of  
perishable  
goods in  
certain cir-  
cumstances.

6. After section 56 of the principal Act, the following section shall be inserted, namely:—

"56A. (1) Where by reason of any flood, land-slip, breach of any line of rails, collision between trains, derailment of or other accident to a train or any other cause, traffic on any route is interrupted and there is no likelihood of early resumption of such traffic, nor is there any other reasonable route whereby traffic of perishable goods may be diverted to prevent loss or deterioration of, or damage to, such goods, the railway administration may, after obtaining wherever practicable instructions from the person appearing to the railway administration to be entitled to the goods, sell them by public auction. 25 30

(2) Out of the proceeds of the sale, the railway administration may retain a sum equal to the charge due in respect of the goods and the expenses of and incidental to the sale rendering the surplus, if any, of the proceeds to the person entitled thereto. 35

(3) The provisions of this section shall be without prejudice to the claim or right which the person entitled to the goods may have against the railway administration under any other enactment for the time being in force." 40

7. In section 61 of the principal Act, in sub-section (1), item (b) shall be omitted. Amendment of section 61.

8. In section 63 of the principal Act, for the words "in English or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages, as the Central Government, after consultation with the railway administration, may determine", the words "in Hindi and in English and also, if considered necessary by the railway administration, in one or more of the regional languages in common use in the territory traversed by the railway" shall be substituted. Amendment of section 63.

9. In section 64 of the principal Act, in sub-section (2), for the words "fifty miles", the words "eighty kilometres" shall be substituted. Amendment of section 64.

10. In section 65 of the principal Act, for the words "in English and in a vernacular language in common use in the territory where the station is situate", the words "in Hindi and in English and also in a regional language in common use in the territory where the station is situate, if Hindi is not in common use therein" shall be substituted. Amendment of section 65.

11. In section 66 of the principal Act, in sub-section (2),— Amendment of section 66.

(a) in clause (a), for the words "in a vernacular language in common use in the territory traversed by the railway", the words "in Hindi and in a regional language in common use in the territory traversed by the railway" \*\*\*\* shall be substituted; and

(b) in clause (b), for the words "in English", the words "in Hindi and in English" shall be substituted.

12. In section 71B of the principal Act, the words and figures "the Indian Merchant Shipping Act, 1923 or" shall be omitted and after the words and figures "the Mines Act, 1952", the words and figures "or the Merchant Shipping Act, 1958" shall be inserted. Amendment of section 71B.

13. For sections 72, 72A, 73, 74, 74A, 74B, 74C, 74D, 74E, 75, 76, 77 and 78 of the principal Act, the following sections shall be substituted, namely:— Substitution of new sections for sections 72 to 78.

"72. Any person delivering to a railway administration any animals or goods to be carried by railway shall,—

(a) if the animals or goods are to be carried by a train intended solely for the carriage of goods, or

(b) if the goods are to be carried by any other train and consist of articles of any of the following categories, namely:—

(i) articles carried at owner's risk rates,

Execution of forwarding notes in respect of animals or goods carried

- (ii) articles of a perishable nature,
- (iii) articles mentioned in the Second Schedule,
- (iv) articles in a defective condition or defectively packed,
- (v) explosives and other dangerous goods, 5

execute a note (in this Act referred to as the forwarding note) in such form as may be prescribed by the railway administration and approved by the Central Government, in which the sender or his agent shall give such particulars in respect of the animals or goods so delivered as may be required. 10

General  
responsibility  
of a railway  
administra-  
tion as a  
carrier of  
animals and  
goods.

73. Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage, deterioration or non-delivery, in transit, of animals or goods delivered to the administration to be carried by railway, arising from any cause except the following, namely:— 15

- (a) act of God;
- (b) act of war;
- (c) act of public enemies;
- (d) arrest, restraint or seizure under legal process;
- (e) orders or restrictions imposed by the Central Gov- 20  
ernment or a State Government or by any officer or authority subordinate to the Central Government or a State Govern-  
ment authorised in this behalf;
- (f) act or omission or negligence of the consignor or  
the consignee or the agent or servant of the consignor or 25  
the consignee;
- (g) natural deterioration or wastage in bulk or weight  
due to inherent defect, quality or vice of the goods;
- (h) latent defects;
- (i) fire, explosion or any unforeseen risk: 30

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruc- 35  
tion, damage, deterioration or non-delivery unless the adminis-  
tration further proves that it has used reasonable foresight and  
care in the carriage of the animals or goods.

5 74. (1) When any animals or goods are tendered to a railway administration for carriage by railway and the railway administration provides for the carriage of such animals or goods either at the ordinary tariff rate (in this Act referred to as the railway risk rate) or in the alternative at a special reduced rate (in this Act referred to as the owner's risk rate), the animals or goods shall be deemed to have been tendered to be carried at owner's risk rate, unless the sender or his agent elects in writing to pay the railway risk rate.

Responsibility of a railway administration for animals or goods carried at owner's risk rate.

10 (2) Where the sender or his agent elects in writing to pay the railway risk rate under sub-section (1), the railway administration shall issue a certificate to the consignor to that effect.

15 (3) When any animals or goods are deemed to have been tendered to be carried, or are carried, at the owner's risk rate, then, notwithstanding anything contained in section 73, the railway administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery, in transit, of such animals or goods, from whatever cause arising, except upon proof that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on the part of the railway administration or of any of its servants.

25 75. A railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage belonging to a passenger unless a railway servant has booked the luggage and given a receipt therefor and in the case of luggage which is carried by the passenger in his charge, unless it is also proved that the loss, destruction, damage or deterioration was due to the negligence or misconduct on the part of the railway administration or of any of its servants.

Responsibility of a railway administration as carrier of luggage.

30 75A. When any goods which, under ordinary circumstances, would be carried in covered vehicles or vessels and would be liable to damage if carried otherwise, are, at the request of the sender or his agent recorded in the forwarding note, tendered for carriage by railway in open vehicles or vessels, the railway administration shall not be responsible for any destruction, deterioration or damage which may arise only by reason of the goods being so carried.

Responsibility of a railway administration for goods carried in open vehicles.

40 76. A railway administration shall be responsible for loss, destruction, damage or deterioration of animals or goods proved by the owner to have been caused by delay or detention in their carriage unless the railway administration proves that the

Responsibility for delay or detention in transit.

delay or detention arose without negligence or misconduct on the part of the railway administration or of any of its servants.

Responsibility for deviation of route.

76A. Where, due to a cause beyond the control of a railway administration or due to congestion in the yard or other operational reasons, animals or goods delivered to the railway administration to be carried by railway are carried over a route other than the route by which they are booked or the usual or customary route, the railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of route. 5

Responsibility for wrong delivery.

76B. Where a railway administration to which animals or goods are delivered to be carried by railway delivers them in good faith to a person who produces the original railway receipt, the railway administration shall not be responsible on the ground that such person is not legally entitled thereto or that the endorsement on the railway receipt is forged or otherwise defective. 10

Responsibility for goods to be delivered at siding.

76C. In the case of goods to be delivered by a railway administration at a siding not belonging to the administration, the railway administration shall not be responsible for loss, destruction, damage, deterioration or non-delivery of such goods, from whatever cause arising, after the wagon containing the goods has been placed at the point of interchange of wagons between the railway administration and the owner of the siding and the owner of the siding has been informed in writing that the wagon has been so placed. 20

Responsibility of two or more railway administrations for through traffic.

76D. Where any animals or goods delivered to a railway administration to be carried by railway have been booked through over the railways of two or more railway administrations or over one or more railway administrations and one or more transport systems not belonging to any railway administration, the person tendering the animals or goods to the railway administration shall be deemed to have contracted with each one of the railway administrations or the owners of the transport systems concerned, as the case may be that the provisions of this Chapter shall apply, so far as may be, in relation to the carriage of such animals or goods in the same manner and to the same extent as they would have applied if the animals or goods had been carried by the railway of only one railway administration: 30

Provided that—

40

(a) where there is a deviation in the route by which the animals or goods are to be carried, such deviation was

due to a cause beyond the control of the railway administration, or the owner of the transport system concerned, as the case may be, or to congestion in the yard or other operational reasons;

- 5 (b) for the purpose of making the provisions of this Chapter relating to the carriage of animals or goods at the owner's risk rate applicable, the benefit of the railway risk rate and the owner's risk rate was available in the alternative to the sender on each of the railway administrations or  
10 transport systems concerned at the time of the delivery of the animals or goods to the railway administration for the purpose of carriage.

76E. Where in the course of carriage of animals or goods from a place in India to a place outside India or from a place  
15 outside India to a place in India or from one place outside India to another place outside India or from one place in India to another place in India over any territory outside India, the animals or goods are carried over the railway of a railway administration, the railway administration shall not be responsible under any of  
20 the provisions of this Chapter for loss, destruction, damage or deterioration of the animals or goods, from whatever cause arising, unless it is proved by the owner of the animals or goods that such loss, destruction, damage or deterioration arose on the railway of the railway administration.

25 76F. Notwithstanding anything contained in section 74,—  
(a) where the whole of a consignment of goods, or the whole of any package forming part of a consignment, carried at owner's risk rate is not delivered to the consignee and such non-delivery is not proved by the railway administration to have been due to fire or to any accident to the train,  
30 or

(b) where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by  
35 hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit,

40 the railway administration shall be bound to disclose to the consignor how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor.

Responsibility of railway administration in case of traffic passing over railways in India and foreign countries.  
Burden of proving misconduct in case of non-delivery or pilferage in transit of goods carried at owner's risk rate.

Responsibility of a railway administration after termination of transit.

77. (1) A railway administration shall be responsible as a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872, for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway within a period of thirty days after the termination of transit:

9 of 1872.

5

Provided that where the goods are carried at owner's risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, arising after the expiry of the period of thirty days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of the goods mentioned in the Second Schedule, animals and explosives and other dangerous goods carried by railway, after the termination of transit.

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(4) Nothing in the foregoing provisions of this section shall relieve the owner of animals or goods from liability to any demurrage or wharfage for so long as the animals or goods are not unloaded from the railway wagons or removed from the railway premises.

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(5) For the purposes of this Chapter,—

(a) unless otherwise previously determined, transit terminates on the expiry of the free time allowed (after the arrival of animals or goods at destination) for their unloading from railway wagons without payment of demurrage, 30 and where such unloading has been completed within the free time so allowed, transit terminates on the expiry of the free time allowed for the removal of the animals or goods from railway premises without payment of wharfage;

(b) 'demurrage' and 'wharfage' have the meanings 35 respectively assigned to them in clause (d) and clause (h) of section 46C.

77A. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the responsibility of a railway administration for the loss, destruction, damage, deterioration or 40 non-delivery of any animal delivered to the administration to be carried by railway shall not exceed the amount respectively specified in column (2) against the item relating to the animal

Further provision with respect to the responsibility of a railway administration as a carrier of animals.

in column (1) of the First Schedule. unless the person delivering the animal to the railway administration declares in writing a higher value in the forwarding note and has paid or engaged to pay to the railway administration a percentage specified by it upon the excess of the value so declared over the respective sums mentioned in column (2) of the said Schedule.

(2) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid.

(3) Nothing contained in this section shall render the railway administration liable for any loss, destruction or damage arising from fright or restiveness of the animal or from overloading of wagon by the consignor or his agent.

77B. (1) Notwithstanding anything contained in the provisions of this Chapter, when any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration to be carried by railway and the value of such articles in the parcel or package exceeds five hundred rupees, the railway administration shall not be responsible for the loss, destruction, damage or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or the package for carriage by railway, and if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk.

Further provision with respect to the responsibility of a railway administration as a carrier of articles of special value.

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost, destroyed, or damaged or has deteriorated, the compensation recoverable in respect of such loss, destruction, damage or deterioration shall not exceed the value so declared.

(3) A railway administration may make it a condition of carrying a parcel or package declared to contain any article mentioned in the Second Schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel or package actually contains the article declared to be therein.

(4) The Central Government may, by notification in the Official Gazette, direct that any article mentioned in the Second Schedule may, without being contained in any parcel or package,

be delivered to a railway administration to be carried by railway and upon the issue of such notification, the provisions of this section shall apply in relation to such article as they apply in relation to any article mentioned in the Second Schedule and contained in any parcel or package

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Responsibility of a railway administration for damage, deterioration, etc., of goods in defective condition or defectively packed.

77C. (1) When any goods tendered to a railway administration to be carried by railway—

(a) are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wastage, or

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(b) are either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under sub-section (4), and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage,

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and the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage, or for the condition in which such goods are available for delivery at destination, except upon proof of negligence or misconduct on the part of the railway administration or of any of its servants.

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(2) When any goods delivered to a railway administration to be carried by railway are found on arrival at destination to have been damaged or to have suffered deterioration, leakage or wastage, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the railway administration shall not be responsible for the damage, deterioration, leakage or wastage of the goods on proof by the railway administration—

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(a) that the goods were, at the time of delivery to the railway administration, in a defective condition or were at that time either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under sub-section (4) and as a consequence of such defective condition or defective or improper packing were liable to damage, deterioration, leakage or wastage, and

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(b) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or of any of its servants at the time of

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delivery of the goods to the railway administration for carriage by railway:

5 Provided that the railway administration shall be responsible for any such damage, deterioration, leakage or wastage if negligence or misconduct on the part of the railway administration or of any of its servants is proved.

10 (3) A railway administration shall not be responsible under sub-section (1) or sub-section (2) for any damage, deterioration, leakage or wastage occurring after the expiry of the period of thirty days after the termination of transit as defined in sub-section (5) of section 77.

(4) The Central Government may, by general or special order, prescribe the manner in which goods delivered to a railway administration to be carried by railway shall be packed.

15 78. Notwithstanding anything contained in the foregoing provisions of this Chapter, a railway administration shall not be responsible— Exoneration from responsibility in certain cases.

20 (a) for the loss, destruction, damage, deterioration or non-delivery of any goods with respect to the description of which an account materially false has been delivered under sub-section (1) of section 58 if the loss, destruction, damage, deterioration or non-delivery is, in any way, brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account; or

30 (b) for the loss, destruction, damage, deterioration or non-delivery of animals or goods in cases where there has been fraud practised by the consignor or the consignee or an agent of the consignor or the consignee; or

(c) for the loss, destruction, damage, deterioration or non-delivery of animals or goods proved by the railway administration to have been caused by or to have arisen from—

35 (i) improper loading or unloading by the consignor or the consignee or by an agent of the consignor or the consignee, or

40 (ii) riot, civil commotion, strike, lock-out, stoppage or restraint of labour from whatever cause, whether partial or general; or

(d) for any indirect or consequential damages or for loss of particular market.

Burden of  
proof in  
suits for  
compensa-  
tion.

78A. In any suit against a railway administration for compensation for any delay, loss, destruction, damage, deterioration, or non-delivery, the burden of proving—

(a) in the case of animals, the value thereof, or the higher value declared under section 77A, and where the animal has been injured, the extent of the injury, or

(b) in the case of any parcel or package, the value of which has been declared under section 77B or any article mentioned in the Second Schedule not contained in any parcel or package, the value of which has been declared under that section, that the value so declared is its true value,

shall lie on the person claiming the compensation, but, subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the delay, loss, destruction, damage, deterioration or non-delivery was caused.

Notification  
of claims  
refunds of  
overcharges  
and to com-  
pensation for  
losses.

78B. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf—

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the destination station lies, or the loss, destruction, damage or deterioration occurred,

within six months from the date of the delivery of the animals or goods for carriage by railway:

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identify the consignment of such animals or goods shall, for the purposes of this section, be deemed to be a claim to the refund or compensation."

14. For section 80 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 80.

5 "80. A suit for compensation for loss of the life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted,—

Suits for compensation.

10 (a) if the passenger was, or the animals or goods were, booked from one station to another on the railway of the same railway administration, against that railway administration;

15 (b) if the passenger was, or the animals or goods were, booked through over the railway of two or more railway administrations, against the railway administration from which the passenger obtained his pass or purchased his ticket or to which the animals or goods were delivered for carriage, as the case may be, or against the railway administration on whose railway the destination station lies, or the loss, injury, destruction, damage or deterioration occurred; and, in either case, the suit may be instituted in a court having  
20 jurisdiction over the place at which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage, as the case may be, or over the place in which the destination station lies, or the loss, injury, destruction, damage or deterioration occurred."

25 15. In section 82 of the principal Act, in sub-section (1),—

Amendment of section 82.

(i) for the words "enemies of Government", the words "public enemies" shall be substituted;

17 and 18  
Vict., c. 104.  
25 and 26  
Vict., c. 63.  
44 of 1958.

30 (ii) for the words and figures "the Merchant Shipping Act, 1854, and the Merchant Shipping Act Amendment Act, 1862, if the ship were registered under the former of those Acts", the words and figures "the Merchant Shipping Act, 1958, if the ship were registered under that Act" shall be substituted.

16. In section 82J of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

Amendment of section 82J.

35 "(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the  
40 session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so,

however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

Amendment  
of section  
106.

17. In section 106 of the principal Act, for the words "fifty rupees for every maund or part of a maund", the words "one hundred and fifty rupees for every quintal or part of a quintal" shall be substituted. 5

Amendment  
of section  
113.

18. In section 113 of the principal Act, in sub-section (3), for the words "eight annas", the words "fifty naye paise", and for the words "nearest anna, or two annas", the words "nearest multiple of five naye paise, or fifteen naye paise" shall be substituted. 10

Substitution  
of new  
section for  
section 115.

19. For section 115 of the principal Act, the following section shall be substituted, namely:—

Excess  
charge and  
single fare  
collected to  
be paid to  
railway ad-  
ministration.

"115. Out of any amount recovered under section 112, the excess charge and single fare referred to in that section shall be paid to the railway administration before any portion of that amount is credited as fine to the Government; and that portion of any fine imposed under section 114 which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government." 15 20

Amendment  
of section  
130.

20. In sub-section (1) of section 130 of the principal Act, for the words and figures "he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping, or may require", the words "the Court convicting him may require" shall be substituted. 25

Insertion of  
new section  
139.

21. After section 138 of the principal Act, the following section shall be inserted, namely:— 30

Proof of  
entries in  
records and  
documents.

"139. Entries in the records or other documents of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration, and all such entries may be proved either by the production of the records or other documents of the railway administration containing such entries, or by the production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession." 35 40

**22.** In section 140 of the principal Act,—

Amendment  
of section  
140.

(a) for the words “the Manager” wherever they occur, the words “the Manager or the Chief Commercial Superintendent” shall be substituted;

14 of 1866. 5  
6 of 1898.

(b) for the words and figures “under Part III of the Indian Post Office Act, 1866”, the words and figures “under the Indian Post Office Act, 1898” shall be substituted.

14 of 1866. 23. In section 141 of the principal Act, for the words and figures  
6 of 1898. “under Part III of the Indian Post Office Act, 1866”, the words and  
10 figures “under the Indian Post Office Act, 1898” shall be substituted.

Amendment  
of section  
141.

**24.** After section 147 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
147A.

“147A. The Central Government may, by notification in the Official Gazette, add any article to, or omit any article from, the  
15 Second Schedule, and on the publication of such notification, such article shall be deemed to be included in or, as the case may be, omitted from the said Second Schedule.”

Power to  
amend  
Second  
Schedule.

**25.** In the First Schedule to the principal Act, for the brackets, words and figures “(See section 73.)”, the brackets, words, figures and  
20 letter “(See section 77A)” shall be substituted.

Amendment  
of the First  
Schedule.

**26.** In the Second Schedule to the principal Act,—

Amendment  
of the  
Second  
Schedule.

(a) for the brackets, words and figures “(See section 75.)”, the brackets, words, figures and letter “( See section 77B)” shall be substituted;

25 (b) item (s) shall be omitted.

M. N. KAUL,  
Secretary.

